



# LEGAL DIMENSIONS WITH REFERENCE TO A HINDU JOINT FAMILY

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## ABSTRACT

This paper primarily focuses on the concept of the Hindu Joint Family and its legal dimensions. It commences with some introduction as to what exactly is the Hindu Joint Family (HJF). It talks about how the concept varies in its approach when the school of thought changes for instance in the Mitakshara and the Dayabhaga, school of thought. This paper discusses about the classical school of thought. As it further escalates in its approach, it moves onto discussing the composition of the Hindu Joint Family, because though it is a common term, many do not know what a Hindu Joint Family means. As it discusses the various aspects of the Hindu Joint Family, it also in detail discusses the characteristics or the incidents of the same. It further moves into discussing the Rights available to the members of the Hindu Joint Family and also discusses the legislative measures that have been taken to ensure and clear the concept of the Hindu Joint Family. It also discusses about the laws that are applicable in the non patriarchal society i.e. the matriarchal families. Last but not the least, the paper ends with certain set of recommendations and conclusions and wishes to approach a larger section of the society, so as to clear the meaning and the concept of the Hindu Joint Family.

## 1. INTRODUCTION

The paper commences with the introduction to the Hindu Joint Family. A Hindu Joint Family is a normal condition of the Hindu society. It means that the society in which we live is generally surrounded by the Hindu families, so unless and until we know that someone is a Muslim or a Christian, we presume them to be a Hindu, or one of our own type or category.

A Hindu joint family is a family whose family arrangement is extended and which has enormous legal significances in India, especially. Simply, if I would just like to say a Hindu Joint Family would best be described as, the lineal descendants and their dependants where, the former trace their origin to one common ancestor and specifically to a common male ancestor. The underlying essence of the Joint family is the fact that it traces the origin of the individual back to that one common male ancestor that had the intention to start a joint family. It has to be done, taking into considerations the addition and the deaths of the members of the family and thus people of the joint family or a particular joint family can continue till eternity. On one hand when we are talking so much about the joint family, we do not even know, even the name of our forefathers.

Its origin can be traced back to the ancient patriarchal system where the patriarch or the head of the family was the unquestioned male ruler, laying down the various norms for the members of the family, norms for the interpersonal communication and for the communication that took place outside the four walls of the house. They also used to regulate the behaviour of each and every member of the family, be it younger male members or the female members of the family. Everyone had to adhere to the norms that the head of the family, i.e. the patriarch male member. The norms that the patriarch laid down, or had prescribed had to be mandatorily followed by the members of the family, failing which the patriarch would subject them to several punishments, that would eventually teach them to follow the patriarchal norms. The members of the family had an unparalleled control over their lives and they lived like the puppet who used to move as per the guidelines of the headmaster. At the root level was the general family welfare or promotion of family as a unit for which personal interests of the family members could be sacrificed. This means that though altogether they were a family or in other words they were called as a family together, the promotion of the whole unit of the family was important and individual interests served as minor preference in the long run of the concept of the Hindu Joint Family. Under, the Hindu law, therefore the joint family system came first in the historical order and the individual recognition of the person from the family came later and thus individual recognition was not considered to be as important as the family as a whole unit. The ancient system generally treated the property acquired by the members of the family as family property and thus there was no concept of whom the property would be named after the death of the main patriarch and ultimately who will become the next patriarch. The members of the family in the ancient times had equal right to the property and the property was therefore a joint property and not the individual property. It was only with the gradual transformation of the society and the recognition of the members of the family on the individual basis and the independent recognition that they realised that they had individual rights too and thus the concept of separate property arose thereafter and therefore the rules of inheritance were developed. This dual property system though considerably diluted,<sup>1</sup> has survived the lashes and the waves of the time, the judicial and the legislative onslaught and the Hindu society still recognises the joint family and the joint family property as unique entities having no similar concept alive anywhere.

It is really important to note that though a family is a single unit but it does not have a juristic value, which means that a Joint Hindu Family does not have a separate legal identity and is not a juristic person. Though, the only collective statutory recognition that has been bestowed upon a Joint Hindu Family is for the purposes of taxation. Though the definition remains highly flexible. Its definition is subjective, so to define it in some particular words would not justify the essence of the subject matter itself.

There are different schools according to the Hindu mythology. They are Mitakshara and Dayabhaga schools of law-qua the Hindu Joint Family set up. Though both the schools talk or discuss about the same subject matter, they are different in their approach. They look at the same argument in the two different ways. For instance, in the Hindu undivided family governed by the Mitakshara Law, no individual or a single entity member of that family can predicate what amount of share, he or she has in the joint family property.

when we want to distinguish between the two respective schools of thought, we must take into consideration certain aspects of field of knowledge which require dire attention. They are the essentials as to what the two schools of law require or are essentials of the same.

**Coparcenary** for instance means partnership in inheritance, or in other words it means joint heir ship, or it can also be known as the joint right of succession to an inheritance. Though a coparcenary may exist, yet till partition takes place there cannot be a definite share for any of the coparceners. It is mainly because the eldest member of the family or the **Karta** is still alive and the partition has not been done yet. The concept basically states that, the property would be devolved upon the death of the coparcener to his next survivor, irrespective of who is heir is. The Karta is the eldest member of the family and is the coparcenary is the representative of the family.

There is a difference in the way a joint family comes into existence and support each other. both of the concepts are different in the Mitakshara and the Dayabhaga systems. Under the Dayabhaga school, it is on the death of the karta, the succession is per stirpes; that each son has an equal and absolute share, i.e. each of the sons, have an equal share and also they have an absolute right, i.e. that the sons have the right to sell, mortgage or even rent their share of the inherited property. By absolute, one may note that none of the descendants of the heir inheriting have any right over the property. In addition to this, if one of his heirs dies then, even his wife or unmarried daughter have a share over his property which is not possible under the Mitakshara law.

Another point that counts the real distinction between the two is that a coparcener takes a fixed share once the Karta dies. In other words it's a certain share. Thus, for example a person dies leaving behind the four sons, then each of them will have an equal share, i.e. one fourth of the total property, will be the share of each son.

Under the Mitakshara school of Hindu Law, it may be said that there is a literal presumption of love and affection in the family, i.e. there is a community interest in the family property. By community interest, it is meant that all the coparceners of the property have an interest in the joint family property. Under the Dayabhaga school though, no matter what the circumstances get, everyone or each and every coparcener will be having equal share of property. It is a presumed notion that every coparcener will have equal share of property but only on the death of the

Karta. In the Dayabhaga school of law, however there is no scope for inheriting any property because the property is devolved only at the time of the death of the Karta or the head of the family. It is due to this concept that there exists no coparcenary between the grandfather and the grandson under the Dayabhaga school of thought.

## 2. COMPOSITION OF A JOINT FAMILY

In the previous chapter, we have understood as to what is meant by a Hindu Joint Family but we really do not know who belongs to that family. Whether everyone who lives under the same roof, comprised of the joint family or any people outside the territorial boundaries of the house can also constitute itself to be a member of the Joint Hindu Family?

All these questions, as per the understanding of the author(s) is completely logical and makes sense in some or the other way. According to the classical concept of the Hindu Joint Family, the Hindu Joint Family, consists of all the male members descended lineally from the common male ancestor together with their mothers, wives and unmarried daughters.<sup>2</sup> Unmarried daughters cease to be a part of the Hindu Joint Family of the father once married. It is because in a patriarchal society like ours when the daughter gets married, she goes to another family or the family of her husband and when she does so, she is counted in the Hindu Joint Family of the husband's father. If in any circumstances, she become a widow or is deserted by her husband and returns to her father's house permanently, then she will be counted as a member of the Father's Joint Family.<sup>3</sup> It is because she permanently shifts back to her own original house where she previously lived, though in the Indian society her original house is the one where she gets married, but legally she belongs to her parents and therefore, the original house where she belongs is that of the father's. However, if the woman returns with her children, her children will not be considered as the part of the Hindu Joint Family of the woman's father, instead they continue to be the members of their father's joint family, whom they have left. A child, if in the womb of the mother returns back with the mother, then he or she will be not be considered as the member of the Hindu Joint Family for taxation purposes<sup>4</sup> but is treated as in existence for certain purposes under the Hindu Law.

The members of a joint family are bound together by the fundamental principle of the sapinda relationship or family relationship, which in fact serves as the purpose of great importance for another chain of important institutions. The cord that knits the members of the family together are the congenial bond between them. The love that each one of them shares with each other and the whole family together, is the cord that connects them and keeps them together. However, if we notice a new trend in the society, it is the property that binds the joint families together. In the wake of materialism, greed and unrealistic goals, an individual has given up on the morality, sanctity and the chastity of the relationships that exist among the members of the Hindu Joint Family. The emerging trends focus upon certain aspects that the concept did not even initially foresee to be. People of a Hindu Joint Family, remain a part of the family, so as in greed of the property that their father or forefathers have. Despite, they becoming the heir of their own father and getting the share of their own, some people also focus onto getting the siblings share of property as well. So, in the gruesome desire for the accomplishment of unrealistically high standards of life, one falls to such a level of breaking down the sanctity of the familial relationships.

In the Mitakshara school of thought, the joint family property is founded upon the existence of an undivided family as a corporate body.<sup>5</sup> There are certain essentials of the same. The first essential is the family unit and the second requisite is the possession of some property which can be called as the family property. Without both of the requisites, it is impossible to apply any of the schools of thought because if there will be no existence of the family unit, the property then will not be a family property and if there will be no family property then it could not be divided or inherited by any of the children. Such body, with its heritage, is purely a creature of law and cannot be created by the acts of parties save in so far that by adoption a stranger may be affiliated as the member of that corporate family.<sup>6</sup> In the absence of any evidence to the contrary a uterine brother is a member of the Hindu Joint Family in Nepal.<sup>7</sup>

## 3. INCIDENTS OR CHARACTERISTICS OF A HINDU JOINT FAMILY

There are many incidents as far as the Hindu Joint Family is concerned. The characteristics of the Hindu Joint Family can be jotted down in a number of ways. they are as follows.

- (1) A common male ancestor is necessary to bring the Hindu Joint Family in existence but is not necessary for its continuation. After the death of the common male ancestor the rest of the family will still continue to be a Hindu Joint Family. the existence of the Hindu Joint Family does not wither away with the death of the common male ancestor. for instance, in a family there is a grandfather, and there are many members after him to look after the concept of Hindu Joint family, then after the death of the Grandfather, it does not mean that the family that is remaining will not be a Hindu Joint Family, it is because it was the grandfather who made the family as the Hindu Joint Family.
- (2) A Hindu Joint Family is purely a creature of law. Thus means that, it cannot be created by the act of the members or an agreement between the parties. It

is something which is created with the intention of doing so. Therefore, a stranger cannot be made a member of the Hindu Joint Family even by the agreement among all the members. The only exception to that is the marriage and adoption. A female can be introduced in the family as the member of the family by virtue of her marriage with one of the sons of the father or the grandfather or in other words the lineal male descendant of the family and the child, male or a female can be added to the family by birth or by a valid adoption into the family. the day since the child arrives in the family, he becomes the part of the Hindu Joint Family.

- (3) A Hindu Joint Family has no legal entity or a distinct identity from its members.<sup>8</sup> This means that the joint family is a single unit and is not a legal unit or does not have a legal identity as a unit and is not recognised as some company or a corporate. It is a unit and is represented by the manager of the joint family who is called the Karta<sup>9</sup>, in all the family matters. It cannot sue or be sued in its own name. It is neither a juristic person,<sup>10</sup> nor a corporation and therefore cannot convey the property in its joint character.
- (4) A Hindu Joint Family is not a juristic personality capable of holding property as an entity separate from its members. It is because the members of the Hindu Joint family are bound together by the congenial bond between them and not the greed and want of the materialistic desires, though in the reality it is the vice versa that prevails. Therefore, when it is said in relation to the joint family that it possesses joint family property or a coparcenary property, it literally means that not only the family as a unit but also its members collectively own the property.<sup>11</sup> This is main reason why today people prefer joint families, so that they can get their share of property and not because they want to live together with the people or the members of that family.
- (5) The status of the Hindu Joint Family member can be lost by conversion to another faith. this means that if the member of the Hindu joint family, converts his or her religion to any other religion apart from Hinduism, then he or she de-bars herself or himself from being the member of the Hindu Joint Family and therefore, in its consequence loses the right of the joint ownership of the property. Also if any member of the family marries a non-Hindu, then also he or she loses the right to be called as a member of the Hindu joint family. This happens in the case on being adopted by the competent parents, and for a daughter, on getting married.
- (6) All the members in the Hindu Joint Family do not have equal rights in the family property. Coparceners have an interest in the coparcenary property while females and male members other than coparceners or disqualified coparceners have a right of maintenance and a right of residence in the joint family house.
- (7) The continuation of the joint family is not dependant on the presence of the male member in the family.
- (8) Plurality of members is the necessary for constitution of or continuation of the joint family but plurality of male members is not necessary for its continuation. the joint family does not end even with the death of the male members as long as it is possible in the nature of the things to add a male member in the family.
- (9) A Hindu Joint Family may continue in perpetuity until it ends. Even where a partition is effected this joint family may break out but does not end as in its place two or more joint families come into existence.

When we talk about the incidents of the Hindu Joint family, there is an implied presumption of jointness, which means that we automatically presume that there exists certain amount of joint or in other words coherent feeling and the bond of togetherness in the members of the family. The general principle is that every Hindu family is presumed to be a joint Hindu family<sup>12</sup>, and continues to be joint<sup>13</sup> unless contrary is proved. The Hindu joint family is presumed to be joint in food, worship and estate.<sup>14</sup> But that does not necessarily mean that they must have a common kitchen, a joint place of worship or that they should worship at all. However, if they do have a common kitchen, it is presumed to be a joint one, unless and until it is provided to the knowledge of the person doing the survey or collecting the information. It is also possible that the members of the joint family are just living together for the sake of it and they do not have any interest in the other members of the family, i.e. they do not have any coherent feelings towards each other and are just there for their own vested interests and the share of the inherited property that they are going to get at a later stage in life. also, it is possible that any member of the family has to move out of the house for career prospects or for the sake of the job and their reasons but that solely does not remove him/her from the right of inheritance that they have in the joint family property. They will still be entitled to their own share of the property of the Hindu Joint Family Property. In the case of the Commissioner of Income Tax v. Gomedalli Lakshminarayan, AIR 1935 Bom 412, a Hindu Joint Family consisted of the father, his wife, his son, and the son's wife. Upon the death of the father, the question before the Income tax commissioner was whether the joint family can continue even when there was only male member i.e. the son in this case and whether he is to be assessed as an individual or as the Karta of the joint family of which he was a member. the importance of this question lay in the fact that for the purposes of

super tax he would be allowed a large exemption if he was taxed as the manager of a Hindu family than if he is taxed as an individual. It also means that if the Hindu joint family is taxed as a unit the individual members are not liable to be charged in respect of what each member receives as his or her share of the joint income. The court held that he was to be assessed as the Karta of the Hindu undivided family. Explaining the concept of the Hindu Undivided family and a coparcenary and the distinction between the two, the court observed that while for a coparcenary the presence of at least two male members in the joint family is a necessary requirement, a Hindu joint family can continue even with one male member, and accordingly in this case the son was competent to be assessed as the Karta of his joint family.

Though every Hindu family is presumed to be a joint Hindu family yet the strength of the presumption necessarily varies in each case.<sup>15</sup> The presumption is peculiarly strong in the case of father and the sons,<sup>16</sup> sons of one father<sup>17</sup> and also in the case of brothers<sup>18</sup> than in case of cousins. The further one goes from the founder of the family the presumption becomes weaker and weaker<sup>19</sup>. Even where one son separates from the father, the other sons, more in case they are minors, would be presumed to be joint with the father<sup>20</sup>. This presumption of jointness can be rebutted by direct evidence or by the course of conduct. Thus, where an estate was originally ancestral belonging to a joint family, the presumption of law is, that a family once joint retains that status and this presumption can only be rebutted by evidence of partition or acts of separation.

A Hindu joint family is presumed to be joint in food, worship and estate, yet there is no fundamental requirement of law that it must possess joint property. There is no presumption that there must be or there should be a property, if there is existence of the Hindu Joint family. This means that just because there is the existence of the Hindu Joint Family, does not necessarily mean that there will be a Hindu Joint Family Property too. There can be circumstances when there is a joint family but there is no point of existence of the joint property. Practically, it is difficult to conceive of a situation where the joint family members are living together and yet do not have some common or joint items of property. They may not be expensive items but a normal common habitation is indicative of common sharing of at least some household items. However, in law there is no presumption that a joint family possesses joint family property or any property at all or that it should be of value.<sup>21</sup>

#### 4. HINDU UNDIVIDED FAMILY AND HINDU JOINT FAMILY

The Hindu Undivided Family is the term which has been used in all the revenue statutes. This appears to be slightly different from the term The Hindu Joint Family or the Joint Hindu Family, under the Hindu law. So, we can infer from this statement that there is only a slight and not a major difference in these terms. So, now we need to look at that slight difference about which it has been talked about. Section 2(9) of the Indian Income Tax Act, 1922 defines a 'person' to include inter alia, a 'Hindu Undivided Family'. A Hindu undivided family is taxable unit for the purposes of the purpose of income tax and super tax. The expression 'Hindu Undivided Family' finds the reference in various provisions of the act but this expression is not defined in the act. The reason for the omission according to the Supreme Court is that the expression has a well known connotation under the Hindu Law and being aware of it, the legislature did not want to define the expression separately in the act. Therefore, the expression 'Hindu Undivided Family' must be construed in the sense in which it is understood under the Hindu law.<sup>22</sup> The Supreme Court has said that there is nothing in the scheme of the wealth tax act also to suggest that it is different from the joint Hindu family and therefore a joint Hindu family and undivided family are synonymous terms. However in a recent decision the Rajasthan High Court made an interesting observation.<sup>23</sup>

"There is no such thing as the Hindu Undivided Family's property. In fact the subject index of the Mulla's Hindu Law which deals with nearly every matter discussed in the book does not refer to any such thing as the Hindu Undivided Family much less property belonging to such family."

In the light of the Supreme Court's observation that both of the terms are synonymous, there are some basic differences between the two. They are appended below :-

- (i) One of the basic difference between the two terms is that every Hindu family is presumed to be a joint family until the contrary is provided. Whereas on the other hand there is no such assumption in the taxation laws for the Hindu family, where this stands as the main point of contention.
- (ii) Under the Hindu law though there is a presumption that every Hindu family is a joint family, there is no presumption that every Hindu joint family has a joint property too. Therefore, under the Mitakshara school of thought there can be a Hindu Joint Family without the joint property. However, the concept of the Hindu undivided family under the revenue laws is linked only with the property. Therefore, the concept of the Hindu undivided Family is pointless when the Hindu Joint family does not have a joint property.
- (iii) Under the Hindu Law, a son in the womb of the mother is treated equally as the son in the existence. He can also restrict the rights of the sole survivor as the property gets two owners and which means the right of the first son gets

limited to only his share of the property. However, this is not taken into cognisance until and unless the second child is born.

- (iv) The Hindu Joint Family is used in the context of the Hindu Law whereas the Hindu Undivided family is the term used in the context of the taxation laws or the revenue laws. The purpose of the difference lies in the fact that the Hindu Joint family is taxed as a super tax under the revenue laws under the term Hindu Undivided Family.
- (v) These differences in approach have created a distinction between the Hindu joint family under the Hindu Law and a Hindu Undivided family for the taxation purposes. This is the reason why under Hindu Law there cannot be a joint family consisting only of a mother and a daughter and the mother will not be a Karta of this Hindu family; yet for the purpose of the income tax she can be assessed as the head/manager of the Hindu Undivided family.<sup>24</sup>

#### 5. RIGHTS OF MEMBERS OF THE HINDU JOINT FAMILY

The members of the Hindu joint family are entitled to certain rights when it comes to their share or property or their existence in the house or any such matter. The rights are appended below :-

1. All members of the Hindu joint family, do not have equal rights.
2. The interest in the coparcenary property is with the coparceners, including the right to demand its partition and the right to challenge its unauthorised alienation made by the Karta.
3. All other female members including the widows of the deceased coparceners, male members beyond the four generations, disqualified coparceners and illegitimate sons of the lineal male descendants, have a right of maintenance out of the joint family funds and a right of residence in the joint family home.
4. The right of residence cannot be enforced as it depends upon the individual preference and the circumstances of the individual. Also, that the right of residence cannot be enforced upon an individual even if the individual has been proved to be a nuisance to the family members. If at all there is a case when an individual is proved to be a nuisance to the other family member then the Karta can hand him his share and throw him out of the family.
5. Unmarried daughters in the family also have the right to be married out of the joint family funds.<sup>25</sup>

#### 6. LEGISLATIVE MEASURES

One of the basic incidents of the concept of joint family is the existence of joint as well as the separate property in the family. In a joint family property, the son has a right by birth while the daughter though a member of the family till her marriage, was not a coparcener and had no interest in the coparcenary property. At the time of discussion on the Hindu Succession Bill in the parliament in 1954-55, several parliamentarians recommended its abolition as it is treated women unfavourably, but a considerable majority favoured its retention in the name of the symbolising the essence of the Hindu religion. In order to give better rights to women in the joint family property without abolishing it, the concept of partition was introduced in the Hindu succession Act but the result was unequal treatment to women. In the light of the constitutional mandate of gender parity, these property related provisions stood out as discriminatory and to remove that, two options were available with the legislature. First, to abolish the joint family and separate property distinction by abolishing the very concept of the joint family system and the other to make the daughter the same coparcener as that of the son with the right by birth in the coparcenary property. The Kerala legislature opted for the former and passed the Kerala Joint Hindu Family (Abolition) Act in 1975. the enactment was equally applicable to the matriarchal families and also to patriarchal families governed by the Mitakshara law.

#### 7. CONCLUSION

The Hindu Undivided Family and the Hindu Joint family is almost the same. Certain things are presumed in a Hindu joint family and that is unless and until a family declares that they are separated, it is presumed that they are joint family. Also, it is no presumption that if there is a Hindu Joint family, there necessarily be the joint property of the same. Property and family are two different aspects but in the modern world they are often taken as complementary which gives rise to many social and personal problems. As far as the tax matters are concerned, the Hindu Joint family is termed as the Hindu undivided family and the term Hindu Undivided family does not have a separate entity. They are considered as the single unit, and the taxation system is different though.

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